

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LANCE BEAR §
v. § CIVIL ACTION NO. 6:16cv4
PEACHES ROSS, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Lance Bear, a former inmate of the Texas Department of Criminal Justice, Correctional Institutions Division, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Bear was ordered to pay an initial partial filing fee of \$16.17, pursuant to 28 U.S.C. §1915(b). He complied with this order, but due to a clerical error, the payment was not recorded on the docket. As a result, the lawsuit was dismissed without prejudice for failure to prosecute on March 7, 2017.

Two weeks later, on March 20, 2017, Bear telephoned the Court and stated that he had not received any case notifications at his new address. Copies of the Magistrate Judge's Report recommending dismissal and the final judgment were mailed to him and he was instructed to submit a notification of change of address.

On March 24, Bear filed a motion to reopen his case and reassess the payment plan. The Magistrate Judge issued a Report recommending that this motion be granted, but this Report was returned to the Court as undeliverable.

The case was reopened, but on September 18, 2017, the copy of the order reopening the case was returned to the Court. The envelope bears a handwritten notation reading “this person does not live here!!!” Bear’s last contact with the Court was on April 27, 2017, and his current address or whereabouts are unknown.

On January 3, 2018, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute. The Magistrate Judge also recommended that the statute of limitations be suspended for a period of ninety days.

A copy of this Report was sent to Bear at his last known address, return receipt requested, but was returned with a notation reading “Return to sender - Attempted, not known - Unable to forward.” Because no objections were filed to the Report, Bear is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 20) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the statute of limitations on the claims raised in this lawsuit is **SUSPENDED** for a period of ninety days following the date of entry of final judgment in this case.

This suspension of the limitation period affects only those claims which were not barred by limitations as of the date the original complaint was signed, on December 29, 2015. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So Ordered and Signed

Feb 4, 2018



Ron Clark, United States District Judge